

AMENDED IN ASSEMBLY JUNE 4, 2002

SENATE BILL

No. 1627

Introduced by Senator Kuehl

(Coauthors: Senators Alpert and Romero)

(Coauthors: Assembly Members Alquist, Aroner, Chavez, Cohn, Jackson, Keeley, Longville, Lowenthal, Robert Pacheco, Pavley, Steinberg, and Washington)

February 21, 2002

An act to amend ~~Section 6380~~ *Sections 6380 and 6385* of the Family Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

SB 1627, as amended, Kuehl. Protective orders.

Existing law requires the clerk of a court to notify the Department of Justice, by electronic transmission, of the service of a protective order immediately upon receipt of proof of service. Existing law requires the Department of Justice to maintain a Domestic Violence Restraining Order System and to make available to court clerks; and ~~requires~~ law enforcement personnel all information regarding the protective and restraining orders and injunctions.

This bill would revise ~~the latter provision~~ *those provisions* to require a law enforcement officer who serves a protective order to submit the proof of service directly into the Domestic Violence Restraining Order System within one business day, as specified. If the person who served the protective order is not a law enforcement officer, and the court is unable to submit the proof of service directly into the Domestic Violence Restraining Order System, the bill would further require the court to transmit a copy of the proof of service to a local law enforcement agency within one business day of receipt, as specified.

The bill would ~~then~~ require the local law enforcement agency to submit the proof of service directly into the Domestic Violence Restraining Order System *and would make related changes.*

By imposing additional duties on local law enforcement agencies, the bill would create a state-mandated local program.

Existing law requires the Judicial Council to assist local courts charged with issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order.

This bill also would require the Judicial Council to include in those packets information on how to return proofs of service, including mailing addresses and fax numbers.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6380 of the Family Code is amended to
2 read:

3 6380. (a) Each county, with the approval of the Department
4 of Justice, shall, by July 1, 1996, develop a procedure, using
5 existing systems, for the electronic transmission of data, as
6 described in subdivision (b), to the Department of Justice. The data
7 shall be electronically transmitted through the California Law
8 Enforcement Telecommunications System (CLETS) of the
9 Department of Justice by law enforcement personnel, or with the
10 approval of the Department of Justice, court personnel, or another
11 appropriate agency capable of maintaining and preserving the
12 integrity of both the CLETS and the Domestic Violence

1 Restraining Order System, as described in subdivision (e). Data
2 entry is required to be entered only once under the requirements
3 of this section, unless the order is served at a later time. A portion
4 of all fees payable to the Department of Justice under subdivision
5 (a) of Section 1203.097 of the Penal Code for the entry of the
6 information required under this section, based upon the proportion
7 of the costs incurred by the local agency and those incurred by the
8 Department of Justice, shall be transferred to the local agency
9 actually providing the data. All data with respect to criminal court
10 protective orders issued, modified, extended, or terminated under
11 subdivision (g) of Section 136.2 of the Penal Code shall be
12 transmitted by the court or its designee within one business day to
13 law enforcement personnel by either one of the following
14 methods:

15 (1) Transmitting a physical copy of the order to a local law
16 enforcement agency authorized by the Department of Justice to
17 enter orders into CLETS.

18 (2) With the approval of the Department of Justice, entering the
19 order into CLETS directly.

20 (b) Upon the issuance of a protective order to which this
21 division applies pursuant to Section 6221, or the issuance of a
22 temporary restraining order or injunction relating to harassment or
23 domestic violence pursuant to Section 527.6 or 527.8 of the Code
24 of Civil Procedure, or the issuance of a criminal court protective
25 order under subdivision (g) of Section 136.2 of the Penal Code, or
26 the issuance of a juvenile court restraining order related to
27 domestic violence pursuant to Section 213.5, 304, or 362.4 of the
28 Welfare and Institutions Code, or the issuance of a protective order
29 pursuant to Section 15657.03 of the Welfare and Institutions Code,
30 or upon registration with the court clerk of a domestic violence
31 protective or restraining order issued by the tribunal of another
32 state, as defined in Section 6401, and including any of the
33 foregoing orders issued in connection with an order for
34 modification of a custody or visitation order issued pursuant to a
35 dissolution, legal separation, nullity, or paternity proceeding the
36 Department of Justice shall be immediately notified of the contents
37 of the order and the following information:

38 (1) The name, race, date of birth, and other personal descriptive
39 information of the respondent as required by a form prescribed by
40 the Department of Justice.

1 (2) The names of the protected persons.

2 (3) The date of issuance of the order.

3 (4) The duration or expiration date of the order.

4 (5) The terms and conditions of the protective order, including
5 stay-away, no-contact, residency exclusion, custody, and
6 visitation provisions of the order.

7 (6) The department or division number and the address of the
8 court.

9 (7) Whether or not the order was served upon the respondent.

10 (8) The terms and conditions of any restrictions on the
11 ownership or possession of firearms.

12 All available information shall be included; however, the
13 inability to provide all categories of information shall not delay the
14 entry of the information available.

15 (c) The information conveyed to the Department of Justice
16 shall also indicate whether the respondent was present in court to
17 be informed of the contents of the court order. The respondent's
18 presence in court shall provide proof of service of notice of the
19 terms of the protective order. The respondent's failure to appear
20 shall also be included in the information provided to the
21 Department of Justice.

22 (d) (1) Within one business day of service, any law
23 enforcement officer who served a protective order shall submit the
24 proof of service directly into the Department of Justice Domestic
25 Violence Restraining Order System, including his or her name and
26 law enforcement agency, *and shall transmit the original proof of*
27 *service form to the issuing court.*

28 (2) ~~Immediately upon~~ *Within one business day of receipt of*
29 *proof of service by a person other than a law enforcement officer,*
30 *the clerk of the court shall submit the proof of service of a*
31 *protective order directly into the Department of Justice Domestic*
32 *Violation Restraining Order System, including the name of the*
33 *person who served the order. If the court is unable to provide this*
34 *notification to the Department of Justice by electronic*
35 *transmission, the court shall, within one business day of receipt,*
36 *transmit a copy of the proof of service to a local law enforcement*
37 *agency. The local law enforcement agency shall submit the proof*
38 *of service directly into the Department of Justice Domestic*
39 *Violence Restraining Order System within one business day of*
40 *receipt from the court.*

(e) The Department of Justice shall maintain a Domestic Violence Restraining Order System and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, it shall be on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice, and the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial Council forms, ~~and~~. *The informational packets* shall include a design, that local courts shall complete, that describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts, *and shall also include information on how to return proofs of service, including mailing addresses and fax numbers.* The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge. The informational packet shall also contain a statement that the protective order is enforceable in any state, as defined in Section 6401, and general information about agencies in other jurisdictions that may be contacted regarding enforcement of an order issued by a court of this state.

(h) For the purposes of this part, “electronic transmission” shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

(i) Only protective and restraining orders issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice shall be transmitted to the Department of Justice. However, this provision shall not apply to a valid protective or restraining order related to domestic or family violence issued by a tribunal of another state, as defined in Section

1 6401. Those orders shall, upon request, be registered pursuant to
2 Section 6404.

3 SEC. 2. *Section 6385 of the Family Code is amended to read:*

4 6385. (a) ~~On receipt of proof of service of a protective or~~
5 ~~restraining order or injunction described in subdivision (b) of~~
6 ~~Section 6380, a local law enforcement agency or the court shall~~
7 ~~immediately notify the Department of Justice, by electronic~~
8 ~~transmission, regarding the following information:~~

9 (1) ~~The name, race, date of birth, and other personal descriptive~~
10 ~~information of the respondent as required by a form prescribed by~~
11 ~~the Department of Justice.~~

12 (2) ~~The names of the protected persons.~~

13 (3) ~~The date of issuance of the order.~~

14 (4) ~~The duration or expiration date of the order.~~

15 (5) ~~The terms and conditions of the stay-away, custody, and~~
16 ~~visitation provisions of the order.~~

17 (6) ~~The department or division number and the telephone~~
18 ~~number of the court.~~

19 (b) ~~Proof of service of the protective order is not required for~~
20 ~~the purposes of this section~~ *Section 6380* if the order indicates on
21 its face that both parties were personally present at the hearing
22 ~~where at which~~ the order was issued and that, for the purpose of
23 Section 6384, no proof of service is required, or if the order was
24 served by a law enforcement officer pursuant to Section 6383.

25 (c)

26 (b) The failure of the petitioner to provide the Department of
27 Justice with the personal descriptive information regarding the
28 person restrained does not invalidate the protective order.

29 (d)

30 (c) There is no civil liability on the part of, and no cause of
31 action arises against, an employee of a local law enforcement
32 agency, a court, or the Department of Justice, acting within the
33 scope of employment, if a person described in subdivision (g) of
34 Section 12021 of the Penal Code unlawfully purchases or receives
35 or attempts to purchase or receive a firearm and a person is injured
36 by that firearm or a person who is otherwise entitled to receive a
37 firearm is denied a firearm and either wrongful action is due to a
38 failure of a court to provide the notification provided for in this
39 chapter.

1 *SEC. 3.* Notwithstanding Section 17610 of the Government
2 Code, if the Commission on State Mandates determines that this
3 act contains costs mandated by the state, reimbursement to local
4 agencies and school districts for those costs shall be made pursuant
5 to Part 7 (commencing with Section 17500) of Division 4 of Title
6 2 of the Government Code. If the statewide cost of the claim for
7 reimbursement does not exceed one million dollars (\$1,000,000),
8 reimbursement shall be made from the State Mandates Claims
9 Fund.

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